



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 30, 1996

Mr. Leonard H. Dougal
Small, Craig & Werkenthin, P.C.
Suite 1100, 100 Congress Avenue
Austin, Texas 78701-4099

OR96-1998

Dear Mr. Dougal:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101624.

The Texas Boll Weevil Eradication Foundation, Inc. (the "foundation") received a request for the following information:

1. Any and all billing records from the law firm of Small, Craig & Werkenthin.
2. Any and all records of lawsuits filed by the Texas Boll Weevil Eradication Foundation against farmers who have not paid their 1995 assessments to the Foundation. This should include a list of names and phone numbers of all cotton producers who have been sued by the Foundation.
3. Any and all correspondence between the Foundation and Ed Small.
4. Any and all contracts between the Foundation and the law firm of Small, Craig & Werkenthin.
5. Any and all records of cases of non-payment by cotton producers that have been turned over to the Texas Department of Agriculture for collection.
6. Any and all records relating to compensation or salary paid to Mr. Frank Myers.

The requestor subsequently revised items 1, 5, and 6 of his request to read as follows:

1. Total billing amounts submitted by the law firm of Small, Craig & Werkenthin to the Foundation categorized by eradication zone. This should also include the hourly billing rates charged to the Foundation by each member of the law firm that is doing work for the Foundation.

5. Any and all records of penalties assessed on cotton producers by the Texas Department of Agriculture for non-payment of assessments to the Foundation.

6. Any and all records relating to compensation or salary paid to Mr. Frank Myers. I do not care to have Mr. Myers' private information. However, I do want a list of any perks provided to him.

You state your intention to provide the requestor with the information responsive to the items 1 and 6 of the revised request. You have provided the requestor with all of the information in the possession of the foundation that is responsive to item 2 of the request. You have also informed the requestor that the foundation has no documents that contain the phone numbers requested in item 2 and no documents that are responsive to item 4 of the request. By letter, you asked the requestor to clarify item 5 of the request, and he has done so. You have not objected to releasing the information that the requestor is seeking in item 5 of his revised request. Thus, we assume that the foundation has released to the requestor any information that is responsive to item 5 of the revised request. The only documents at issue here are those responsive to item 3 of the request.

Prior to receiving the requestor's revised request, you invoked sections 552.101, 552.102, 552.103, and 552.107 of the Government Code and argued that these sections excepted from disclosure information responsive to items 1 and 6 of the original request. As the requestor has revised items 1 and 6 of his request, and you have stated your intention to release to the requestor all information responsive to items 1 and 6 of the revised request, we need not address any of the arguments you have raised except those specifically relating to the information at issue here. Only the information responsive to item 3 of the original request is at issue here, and the only exception to disclosure you have raised with respect to that information is section 552.107. Therefore, we address here only your section 552.107 claim as it relates to the information responsive to item 3 of the request.

Section 552.107 excepts information from disclosure if:

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.


Gov't Code § 552.107. In Open Records Decision No. 574 (1990), this office concluded that

section 552.107 excepts from public disclosure only "privileged information," that is, factual information or requests for legal advice communicated by the client to the attorney in confidence and legal advice or opinion rendered by the attorney to the client. *Id.* at 7-8. Section 552.107(1) does not, however, protect purely factual information. *Id.*

The information at issue here consists of correspondence between foundation officials and Ed Small, a licensed attorney and shareholder in the law firm of Small, Craig & Werkenthin, P.C. You state that Mr. Small "is regularly involved with providing legal advice and counsel to the Foundation on anticipated and pending litigation." Having reviewed the correspondence, we conclude that portions of the correspondence are excepted from disclosure pursuant to section 552.107. We have marked the protected portions of the correspondence accordingly. As the remaining portions of the correspondence are not excepted from disclosure, the foundation must release the remaining portions to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,


Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 101624

Enclosures: Submitted documents

cc: Mr. Robert Bryce
Contributing Editor
The Austin Chronicle
P.O. Box 49066
Austin, Texas 78765
(w/o enclosures)